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Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: O.J. Best Services, Inc.

File: B-276954

Date: June 30, 1997

John Heo, Esq., O.J. Best Services, Inc., for the protester.
Mark H. Alexander, Esq., Defense Commissary Agency, for the agency.
Katherine Riback, Esq., and Paul Lieberman, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Protest based upon alleged failure of offeror to receive solicitation amendments extending the original closing date for receipt of proposals is dismissed where there is no allegation that contracting agency failed in its obligation to use a reasonable method to disseminate solicitation documents to prospective offerors.

DECISION

O.J. Best Services, Inc. protests any award under request for proposals (RFP) No. DECA01-97-R-0047, issued by the Defense Commissary Agency (DCA) to provide shelf stocking and custodial services for the Fort Stewart Commissary at Fort Stewart, Georgia. The protester asserts that the agency improperly failed to provide the firm with two amendments to the solicitation which extended the closing date for receipt of proposals.

We dismiss the protest because it fails to state a valid basis for protest. See 4 C.F.R. § 21.5 (1997).

The RFP, issued on March 6, 1997, established April 14 as the closing date for receipt of proposals. On April 9, the agency issued amendment No. 1 which, among other things, extended the closing date to April 25. On April 18, the agency issued amendment No. 2 modifying the square footage of the custodial work to be performed and further extending the closing date to May 5.

The agency received 21 proposals by that date, including Best's. Nineteen offerors, not including Best, acknowledged both amendments. The protester states that it was able to submit its proposal by the extended due date because someone from the agency called Best to alert it to the May 5 extended due date, but that the firm never actually received the two amendments. Best contends that since it did not receive the amendments establishing the modified square footage of the custodial

work to be performed, it was unable to accurately respond to the modified work requirements.¹

The Competition in Contracting Act of 1984 (CICA), 10 U.S.C. § 2304(a)(1)(A) (1988), requires contracting agencies to obtain full and open competition through the use of competitive procedures, the dual purpose of which is to ensure that a procurement is open to all responsible sources and to provide the government with the opportunity to receive fair and reasonable prices. In pursuit of these goals, it is a contracting agency's affirmative obligation to use reasonable methods for the dissemination of solicitation documents to prospective contractors. Ktech Corp., B-240578, Dec. 3, 1990, 90-2 CPD ¶ 447. In particular, the government is required by regulation to add to the solicitation mailing list all firms that have been furnished solicitations in response to their requests, so that they will be furnished copies of any amendment, unless it is known that the request was made by an entity which is not a prospective offeror. See Federal Acquisition Regulation (FAR) §§ 15.403, 14.205.

Concurrent with the agency's obligations in this regard, prospective contractors have an obligation to avail themselves of reasonable opportunities to obtain solicitation documents. Fort Myer Constr. Corp., B-239611, Sept. 12, 1990, 90-2 CPD ¶ 200. A prospective contractor thus bears the risk of not receiving a solicitation amendment unless there is evidence (other than nonreceipt by the protester) establishing that the agency failed to comply with the FAR requirements for notice and distribution of amendments. Shemya Constructors, 68 Comp. Gen. 213 (1989), 89-1 CPD ¶ 108. Here, the record establishes that the RFP and the two subsequent amendments were mailed to Best. The protester has not alleged and there is no evidence in the record to suggest that the agency failed to comply with the FAR requirements for proper notice and distribution of solicitation documents. Because the protester bears the risk of nonreceipt, the allegations do not establish a valid basis for protest.

The protest is dismissed.

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¹Best's Vice President did attempt to contact the agency to obtain the two amendments on May 2. On the morning of May 5, the Vice President contacted the contract specialist, who promptly faxed the amendments to Best.